

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

MIDDLE District of PENNSYLVANIA

Division

Case No.

3:19-CV-1621

(to be filled in by the Clerk's Office)

John O. Kalu

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Spaulding (warden)K. Middernatch (Lieutenant)K. Bittenbender (DHO)

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

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PER

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DEPUTY CLERK

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

John O. Kalu

All other names by which
you have been known:

ID Number

Register Number 84296-004

Current Institution

Federal Correctional Institution

Address

Victorville #1, P.O. Box 3725AdelantoCA92301

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Mr. SpauldingJob or Title (*if known*)Warden

Shield Number

N/A

Employer

Federal Correctional Institution

Address

P.O. Box 2000White Deer,PA17887

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 2

Name

K. MiddernatchJob or Title (*if known*)Lieutenant

Shield Number

N/A

Employer

Federal Correctional Institution

Address

P.O. Box 2000White DeerPA17887

City

State

Zip Code



Individual capacity



Official capacity

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Defendant No. 3

Name

Job or Title (if known)

Shield Number

Employer

Address

K. Bittenbender
 Discipline Hearing Officer (DHO)
 N/A
 Federal Correctional Institution
 P.O. Box 2000
 White Deer PA 17887
 City State Zip Code

☒ Individual capacity ☐ Official capacity

Defendant No. 4

Name

Job or Title (if known)

Shield Number

Employer

Address

City State Zip Code

☐ Individual capacity ☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☒ Federal officials (a *Bivens* claim)

☐ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

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- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☒ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

The event giving rise to Plaintiff's claims
arose at, Allenwood FCI P.O. Box 2000 White Deer, PA 17887

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- C. What date and approximate time did the events giving rise to your claim(s) occur?

See Attached Complaint
For Complete Details

- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

See Attached Complaint
For Complete Details

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

See Attached Complaint
For Complete Details

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

See Attached Complaint
For Complete Details

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Allenwood Federal Correctional Institution
P.O. BOX 2000 White Deer, PA 17887

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

Aggressive Sexual assault, Retaliation,
solitary Confinement, and unsafe Condition

- 1 -

1 Defendant K. Middernatch was at all times relevant to this action, Lieutenant at FCI Allenwood Federal Correctional Institution and was acting under the color of federal law. by statute the Lieutenant is responsible for ensuring the security, safety and well-being of Prisoner under his Supervision

2 On about October 14, 2016, Plaintiff was returning from the Cafeteria when K. Middernatch singled Plaintiff out and pretend to Pat Plaintiff down, During the Procedure, K. Middernatch grabbed Plaintiff's Penis and testicles and started rubbing them against his hands saying "You like that?" when Plaintiff did not reply, Middernatch smiled and then asked Plaintiff to leave. Plaintiff felt humiliated by the action of Middernatch and was ashamed to tell his fellow inmate what just happened to him.

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3 On about October 29, 2016, Plaintiff was returning from the cafeteria when Lieutenant Middernatch singled Plaintiff out from among his friends Inmate Iamin Abraham and Inmate Carpeah Nyenekor Sr. Again Middernatch Pretend to Pat Plaintiff down, during the Procedure, K-Middernatch grabbed Plaintiff's Penis and testicles and started to squeeze and rub them against his hands asking Plaintiff "what is this in your pocket?"; when Plaintiff did not reply, K-Middernatch smiled at Plaintiff and said he thought it was some kitchen food items that Plaintiff was trying to smuggle out of the Cafeteria. Plaintiff said to Middernatch that he felt assaulted and harassed but Middernatch responded you haven't seen anything yet.

4 On about December 1st 2016, at about 8:30 am. Plaintiff was returning from the Cafeteria for breakfast, there was a thick fog on this particular day, as soon as Plaintiff cleared the metal detector,

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Middermatch was waiting outside the metal detector gate when he singled Plaintiff out and Pretend to Pat him down, Middermatch again grabbed Plaintiff Penis and testicles and started to squeeze and rub them against his hands saying "You like that" when Plaintiff did not reply, K. Middermatch forced his fingers into Plaintiff's anus, saying how about this?

This latest incident was reported to Warden SPaulding via electronics email.

5 Warden SPaulding defendant was at all times relevant to this action the warden at Allenwood Federal correctional Institution and was acting under the color of Federal law. By Statute the Warden is legally responsible for the operation and well being of Prisoners under his supervision.

6 On about November 2, 2016, Plaintiff sent a Confidential electronics email to Warden SPaulding regarding the aggressive repetitive sexual abuse

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Plaintiff encountered in the hands of Middernatch Lieutenant, Warden Spaulding responded to Plaintiff's email that he will look into the matter and then get back to Plaintiff, Plaintiff never heard from warden Spaulding since the report.

- 7 On about November 2, 2016, Plaintiff was approached by three Allenwood's guards at about 3:30 P.M in his housing unit and was handcuffed and taken out of the general Population and Placed in the Special housing unit (SHU)

At the SHU, Plaintiff was stripped naked with no clothes or underwear for thirty minutes in the holding cell where several guards Pass by the holding cell and were laughing at Plaintiff.

- 8 On about November 9, 2016, Plaintiff was questioned by Allenwood's FCI own staff member's Known as the Secrete Investigation Service (SIS) and was advised that they will see

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Plaintiff again after their investigation. This investigation was suppose to be conducted by investigators from the Northeastern region's office not Allenwood own staffs against Bop Policy.

9 On about November 14, 2016, The (SIS) Allenwood FCI staffs called Plaintiff to their office and told Plaintiff that they have concluded their investigation and that K. Middernatch denied the allegation and that they the (SIS) believed his version of the story.

10 Defendant K. Bittenbender was at all times relevant to this action the disciplinary hearing officer (DHO) at Allenwood Federal Correctional Institution and was acting under the color of Federal law. By statute the (DHO) is responsible for ensuring the protection and well being of prisoners under his supervision at all times.

11 On about December 20, 2016,

- 6 -

Plaintiff was scheduled for a (CHD) hearing for offense code 306 and 307 for refusing to go back to the General Population because Plaintiff fear for his life and to face his assailant Middernatch.

12 During the hearing, K. Bittenbender Questioned Plaintiff regarding the PREA Complaint, K. Bittenbender threatened to impose numerous sanctions against Plaintiff if Plaintiff did not drop the Complaint against Middernatch and return to the General Population.

Plaintiff refused to drop the PREA Complaint and was sanctioned in retaliation for filing PREA Complaint against K. Middernatch. the sanctions are as follows:-

- 1- Disallowance of Good Conduct time - 15 days
- 2 Forfeiture of non vested Good conduct time (60 days)
- 3 Loss of Privileges (Phone) - 1 Year
- 4 Loss of Privileges (Visit) - 1 Year
- 5 Loss of Mattress (8am-8pm) - 3 months
- 6 Impound of Personal Property - 3 months.

See Attached Exhibit for Sanctions report

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13 Plaintiff reallege and incorporate by reference paragraph 1 — 25

14 Defendant K. Middernatch Lieutenant violated Plaintiff Kalu's Eight Amendment right to be free from cruel and unusual Punishment through repetitive sexual assault, and solitary confinement

15 Defendants K. Middernatch, Lieutenant K. Bittenbender DHO, Spaulding warden, violated Plaintiff Kalu's Eight Amendment Constitution rights to be free from cruel and unusual Punishment through sanctions to sleep on a cold steel metal bunk for six month in a 10° degree below freezing Special housing unit (SHU) with no heat or thermal pants and shirt during winter

16 Defendant K. Bittenbender DHO violated Plaintiff first Amendment Constitutional right through retaliation because Plaintiff filed a PREA

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Complaint against one of its own staff member and was sanctioned to

1. Disallowance of good Conduct time -15days
- 2 Forfeiture of non vested Good Conduct time 45days
3. Loss of Privilege (phone -4months)
- 4 Loss of Privilege (Visit -4months)
- 5 Loss of mattress - 3 months
- 6 Impound of Personal Properties -3months

All sanctions are to be Served consecutive to like previously imposed.

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17 INJURIES: Plaintiff Kalu has suffered continuing mental anguish manifesting in day time flashbacks lapses of concentration, and outbreaks of jitters, varying in intensity from a mild attack of nerves to almost loss of control, and may have graduated into PTSD ~~Permanent~~ Post-Traumatic Stress disorder.

Plaintiff has since the incident continued to wake at night after experiencing nightmares of sexual assault, and has been heard to cry out in distress during the night, by fellow cell mates. Although sometimes has elapse since the last incident the incidence and intensity of the nightmare has not diminished.

- 10 -

18 The Plaintiff has no Plain, adequate or Complete remedy at law to redress the wrongs described herein, Plaintiff has been and will Continue to be Irreparably Injured by the Conduct of the defendants unless this Court grant Plaintiff Compensatory and Punitive damages relief which Plaintiff seek

19 WHEREFORE, Plaintiff respectfully Prays that this Court

20 Declare that the acts and omission described herein violated Plaintiff's rights under the Constitution and laws of the united states.

21 Order defendants to Pay Compensatory damages in the amount of \$900,000.00 against each defendants jointly and severally

22 Punitive damages in the amount of \$300,000.00 against each defendants

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- 23 A Jury trial on all issues triable
by Jury
- 24 Plaintiff cost in this suit
- 25 Grant other just and equitable relief
that this honorable Court deems necessary

Dated: August 20, 2019

Respectfully Submitted
John O. Kalu #84296-004
FCI Victorville #1
P.O. Box 3725
Adelanto, CA 92301

VERIFICATION

Pursuant to 28 U.S.C. I declare and
verify under penalty of Perjury under the
laws of the United States of America that
the foregoing is true and correct.

Executed on August

John O. Kalu

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- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

To U.S. Department of Justice . FBOP
Northeast Regional office

2. What did you claim in your grievance?

Aggressive sexual assault, Retaliation
cruel and unusual punishment, solitary confinement,
unsafe condition

3. What was the result, if any?

Denied

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

Feb 7th 2017, the Administrative remedy Coordinator
expunged the sanctions imposed by K. Bittenbender (DOH)
Appeal NO. 888397-R1

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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

NOV, 29, 2018 file claim for Damages
~~NOV~~ DEC 21, 2018, claim was denied. Claim NO. TRT-NER-
 2019-01529. Jan 3, 2019, filed letter for reconsideration
 Feb 22, 2019, denied.
 (Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

N/A

2. Court (if federal court, name the district; if state court, name the county and State)

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☒ No

If no, give the approximate date of disposition.

N/A

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

N/A

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

N/A

2. Court *(if federal court, name the district; if state court, name the county and State)*

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☒ No

If no, give the approximate date of disposition

N/A

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

N/A

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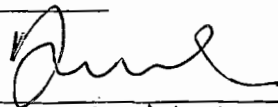
IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 8/20/19

Signature of Plaintiff 

Printed Name of Plaintiff John D. Kalu

Prison Identification # No. 84296-004

Prison Address FCI Victorville #1 P.O. Box 3725
Adelanto CA 92301
City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Address _____

City State Zip Code

Telephone Number _____

E-mail Address _____

Mr. John O. Kailu
NO. 84296-004
Federal Correctional Institution #1
P.O. Box 3725
ADELANTO, CA 92301

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